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In re application of : Heidi RIEDEL et al.

Serial No. : 10/016,964

Filed : December 14, 2001

Attorney Docket No. P29927  
**Mail Stop Appeal brief-Patent**  
**Confirmation No. 7321**  
 Group Art Unit : 1617

Examiner : Kantamneni, Shoba

For : SELF-FOAMING OR FOAM-LIKE PREPARATIONS

**Mail Stop Amendment**

Commissioner for Patents

U.S. Patent and Trademark Office

Customer Service Window, Mail Stop Appeal brief-Patent

Randolph Building

401 Dulany Street

Alexandria, VA 22314

Sir:

Transmitted herewith is an **Appeal Brief under 37 C.F.R. § 41.37** in the above-captioned application.

☐ Small Entity Status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a previously filed statement.

☐ A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.

☐ An Information Disclosure Statement, PTO Form 1449, and references cited.

☐ A Request for Extension of Time.

☐ No additional fee is required.

The fee has been calculated as shown below:

Claims After Amendment	No. Claims Previously Paid For	Present Extra	Small Entity		Other Than A Small Entity	
			Rate	Fee	Rate	Fee
Total Claims: 26	*26	0	X25=	\$	x 50=	\$0.00
Indep. Claims: 3	**3	0	X100=	\$	X200=	\$0.00
Multiple Dependent Claims Presented			+180=	\$	+360=	\$0.00
Appeal brief-Patent				\$		\$500.00
* If less than 20, write 20			Total:	\$	Total:	\$500.00
** If less than 3, write 3						

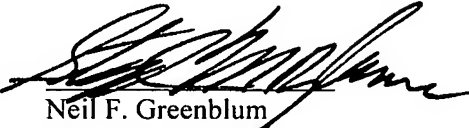
☐ Please charge my Deposit Account No. 19-0089 in the amount of \$\_\_\_\_\_.

☒ A Check in the amount of **\$500.00** to cover the filing/extension fee(s) is included.

☒ The U.S. Patent and Trademark Office is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0089.

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☒ Any patent application processing fees under 37 C.F.R. 1.17, including any required extension of time fees in any concurrent or future reply requiring a petition for extension of time for its timely submission (37 CFR 1.136)(a)(3).

  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Heidi RIEDEL et al.

**Confirmation No. 7321**

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**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

Commissioner for Patents  
U.S. Patent and Trademark Office  
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Alexandria, VA 22314

Sir:

This Appeal is from the Examiner's Final Rejection of claims 18-43 set forth in the Office Action mailed from the U.S. Patent and Trademark Office on February 23, 2007.

A Notice of Appeal in response to the February 23, 2007 Final Office Action was filed on May 14, 2007.

The requisite fee under 37 C.F.R. § 41.20(b)(2) for filing this Appeal Brief (\$500.00) is being paid by the enclosed check.

Inasmuch as this Appeal Brief is being filed within the initial two-month period prescribed by 37 C.F.R. § 41.37(a)(1), set to expire July 16, 2007 (July 14, 2007 being a Saturday), it is believed that no extension of time is required. However, the Patent and

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Trademark Office is authorized to charge any fee necessary for maintaining the pendency of this application, including any appeal or extension of time fees that may be necessary, to Deposit Account No. 19-0089.



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### **I. REAL PARTY IN INTEREST**

The real party in interest in this appeal is Beiersdorf AG of Hamburg, Germany. The corresponding assignment was recorded in the U.S. Patent and Trademark Office on March 21, 2002 at REEL 012751, FRAME 0153.

### **II. RELATED APPEALS AND INTERFERENCES**

Appellants, Appellants' representative or the Assignee are not aware of any prior and pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **III. STATUS OF CLAIMS**

The status of the claims is as follows:

Claims 18-43 are pending in this application.

Each of claims 18-43 is indicated as rejected in the Final Office Action mailed February 23, 2007. Claims 1-17 are cancelled.

The rejection of each of claims 18-43 is under appeal. Claims 18-43 involved in the appeal are reproduced in the Claims Appendix attached hereto.

### **IV. STATUS OF AMENDMENTS**

No Amendment has been filed subsequent to the Final Office Action mailed February 23, 2007.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

### A. Claim 18

Independent claim 18 is drawn to a self-foaming and/or foam-like cosmetic or dermatological preparation comprising a total of from 2 % to 20 % by weight, based on the total weight of the preparation, of

(a) at least one emulsifier A selected from wholly or partially neutralized and unneutralized, branched and/or unbranched, saturated and/or unsaturated fatty acids having a chain length of from 10 to 40 carbon atoms,

(b) at least one emulsifier B selected from polyethoxylated fatty acid esters having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 and esters of fatty acids having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units, and

(c) at least one coemulsifier C selected from branched and/or unbranched, saturated and/or unsaturated fatty alcohols having a chain length of from 10 to 40 carbon atoms; and from 1 % to 90 % by volume, based on the total volume of the preparation, of at least one gas selected from air, oxygen, nitrogen, helium, argon, nitrous oxide and carbon dioxide.

See, e.g., the present specification at page 3, lines 13-33, page 4, lines 20-33 and page 5, lines 29-32. See also original claims 1 and 7.

**B. Claim 37**

Independent claim 37 is drawn to a self-foaming and/or foam-like cosmetic or dermatological preparation comprising a total of from 5 % to 15 % by weight, based on the total weight of the preparation, of

(a) at least one emulsifier A selected from wholly or partially neutralized and unneutralized, branched and/or unbranched, saturated and/or unsaturated fatty acids having a chain length of from 10 to 40 carbon atoms and comprising one or more of stearic acid and a stearate, isostearic acid and an isostearate, palmitic acid and an isopalmitate, and myristic acid and a myristate,

(b) at least one emulsifier B selected from polyethoxylated fatty acid esters having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 and esters of fatty acids having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units, the emulsifier(s) B comprising one or more of PEG-9 stearate, PEG-8 distearate, PEG-20 stearate, PEG-8 stearate, PEG-8 oleate, PEG-25 glyceryl trioleate, PEG-40 sorbitan lanolate, PEG-15 glyceryl ricinoleate, PEG-20 glyceryl stearate, PEG-20 glyceryl isostearate, PEG-20 glyceryl oleate, PEG-20 methylglucose sesquisteate, PEG-30 glyceryl isostearate, PEG-20 glyceryl laurate, PEG-30 stearate, PEG-30 glyceryl stearate, PEG-40 stearate, PEG-30 glyceryl laurate, PEG-50 stearate, PEG-100 stearate, and PEG-150 laurate, and

(c) at least one coemulsifier C selected from branched and/or unbranched, saturated and/or unsaturated fatty alcohols having a chain length of from 10 to 40 carbon atoms and

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comprising one or more of butyloctanol, butyldecanol, hexyloctanol, hexyldecanol, octyldodecanol, behenyl alcohol ( $C_{22}H_{45}OH$ ), cetearyl alcohol and a lanolin alcohol; and from 10 % to 80 % by volume, based on the total volume of the preparation, of at least one gas selected from air, oxygen, nitrogen, helium, argon, nitrous oxide and carbon dioxide.

See, e.g., the present specification at page 3, lines 13-33, page 4, lines 20-33 and page 5, lines 1-22 and 29-32. See also original claims 1 and 7.

#### **C. Claim 42**

Independent claim 42 is drawn to a method of preparing a cosmetic or dermatological preparation which comprises a gaseous ingredient. The method comprises rendering the preparation self-foaming and/or foam-like by incorporating into said preparation a total of from 2 % to 20 % by weight, based on the total weight of the preparation, of

(a) at least one emulsifier A selected from wholly or partially neutralized and unneutralized, branched and/or unbranched, saturated and/or unsaturated fatty acids having a chain length of from 10 to 40 carbon atoms,

(b) at least one emulsifier B selected from polyethoxylated fatty acid esters having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 and esters of fatty acids having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units, and

(c) at least one coemulsifier C selected from branched and/or unbranched, saturated and/or unsaturated fatty alcohols having a chain length of from 10 to 40 carbon atoms.



See, e.g., the present specification at page 1, line 29 to page 2, line 13, page 3, lines 13-33, page 4, lines 20-33 and page 5, lines 29-32. See also original claims 1, 7 and 14.

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The broad issues under consideration are:

1. Whether claims 18-22, 28-33, 35, 42 and 43 are properly rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Beutler et al., U.S. Patent No. 4,808,388 (hereafter “BEUTLER”).
2. Whether claim 42 is properly rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Penska et al., EP 0 938 890 (hereafter “PENSKA”).
3. Whether claim 42 is properly rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Marilyn et al., WO 92/16188 (hereafter “MARILYN”).
4. Whether claims 18-24, 28-31, 34, 36-39, 42 and 43 are properly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bellon et al., FR 2,789,397 (hereafter “BELLON”) and in particular, whether the disclosure of BELLON is sufficient to establish a *prima facie* case of obviousness of the subject matter of claims 18-24, 28-31, 34, 36-39, 42 and 43.
5. Whether claims 25-27, 32, 33, 40 and 41 are properly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON and further in view of Snyder, U.S. Patent No. 4,708,813 (hereafter “SNYDER”) and in particular, whether the disclosures of BELLON and SNYDER are sufficient to establish a *prima facie* case of obviousness of the subject matter of claims 25-27, 32, 33, 40 and 41.

6. Whether claim 35 is properly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BELLON in view of Saint-Leger et al., U.S. Patent No. 5,939,077 (hereafter “SAINT-LEGER”) and in particular, whether the disclosures of BELLON and SAINT-LEGER are sufficient to establish a *prima facie* case of obviousness of the subject matter of claim 35.

Appellants note that the Examiner additionally has provisionally rejected claims 18-41 under the non-statutory doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 15-34 and 43 of Application No. 10/469,695; claims 16-31, 34, 35, 45, 47 and 48 of Application No. 10/469,696; claims 17-32, 35, 36, 47 and 48 of Application No. 10/469,697; claims 14-29, 32, 33, 42 and 43 of Application No. 10/469,698; and claims 13-28, 31, 32 and 40 of Application No. 10/469,074 and also has provisionally rejected claim 42 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 15-17 of Application No. 10/760,088. Appellants will address this provisional rejection once the Board has rendered a decision on the above issues 1. to 6.

## VII. ARGUMENTS

### A. Citation of Authority

#### 1. Novelty

Anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art to show each and every limitation of a claimed invention. *Celeritas Technologies, Ltd. v. Rockwell International Corporation*, 150 F.3d 1354, 1360, 47 USPQ 2d 1516, 1522 (Fed. Cir. 1998); *Oakley, Inc. v. Sunglass Hut International*, 65 USPQ2d 1321, 1325 (Fed. Cir. 2003); *Applied*

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*Medical Resources Corporation v. United States Surgical Corporation*, 147 F.3d 1374, 1377, 47 USPQ2d 1289, 1291 (Fed. Cir. 1998); *Rockwell International Corporation v. The United States, et al.*, 147 F.3d 1358, 47 USPQ2d 1027, 1029 (Fed. Cir. 1998).

An "anticipating" reference must describe all of the elements and limitations of the claim in a single reference, and enable one of skill in the field of the invention to make and use the claimed invention. *Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc.*, 246 F.3d 1368, 1378-79 (Fed. Cir. 2001); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). *Merck & Co., Inc., v. Teva Pharmaceuticals USA, Inc.* 347 F.3d 1367 (Fed. Cir. 2003).

A prior art reference anticipates a patent claim if the reference discloses, either expressly or inherently, all of the limitations of the claim. *EMI Group N. Am., Inc., v. Cypress Semiconductor Corp.*, 268 F.3d 1342, 1350 (Fed. Cir. 2001); *Schering Corp. v. Geneva Pharm.*, 339 F.3d 1373, 1379 (Fed. Cir. 2003).

In order to be anticipating, a prior art reference must be enabling so that the claimed subject matter may be made or used by one skilled in the art. *Amgen Inc. v. Hoechst Marion Roussel, Inc.* 314 F.3d 1313, 1354 (Fed. Cir. 2003).

If a reference does not expressly set forth a particular element of a claim, that reference may still anticipate the claim if the element is "inherent" from the reference. Matter is "inherent" if the extrinsic evidence makes it clear that the matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985); *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349-50 (Fed. Cir. 2002); *In re Crish*, 393 F.3d 1253, 1258-59 (Fed. Cir. 2004). Inherency, however, cannot arise from probabilities or possibilities. The mere fact that a certain

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thing may result from a given set of circumstances is not sufficient. To the contrary, a certain thing must result from a given set of circumstances to be inherent. *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

## 2. Obviousness

The appropriate starting point for a determination of obviousness is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459, 466 (1966):

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

The test of obviousness *vel non* is statutory and requires a comparison of the claimed subject matter as a whole with the prior art to which the subject matter pertains. *In re Brouwer*, 77 F.3d, 422, 37 U.S.P.Q. 2d 1663 (Fed. Cir. 1996); *In re Ochiai*, 71 F.3d 1565, 37 U.S.P.Q. 2d 1127 (Fed. Cir. 1995).

Often, it will be necessary to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. This analysis should be made explicit. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741. “A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two

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known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *Id.*, at 1741.

“If the Examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned.” *In re Rijckaert*, 9 F.3d, 1532, 28 U.S.P.Q.2d, 1956 (Fed. Cir. 1993), citing *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

**B. Claims 18-22, 28-33, 35, 42 and 43 Are Not Properly Rejected Under 35 U.S.C. 102(b) As Anticipated by BEUTLER**

**1. Summary of Rejection**

The rejection appears to rely on Example 7/2 of BEUTLER. From the comments at page 10 of the Final Office Action of February 23, 2007 it appears that the Examiner concedes that the composition of Example 7/2 does not contain an emulsifier B as recited in the present claims. In this regard, the Examiner appears to rely on Example 4/2 of BEUTLER which comprises PEG-9 stearate as non-ionic emulsifier.

**2. BEUTLER Fails to Disclose a Composition Which Necessarily Comprises All of the Emulsifiers Recited in the Rejected Claims**

Appellants point out that the Examiner has failed to point to a single specific composition of BEUTLER which can be considered to be encompassed by any of the rejected claims.

Further, the composition of Example 7/2 of BEUTLER mainly relied on by the Examiner comprises, *inter alia*, 2.5 % by weight of stearic acid (which corresponds to emulsifier A recited in present independent claims 18 and 42) as one component of the consistency providing agents contained therein and 1.0 % by weight of cetearyl alcohol (which corresponds to emulsifier C

recited in present independent claims 18 and 42) as the other component of the consistency providing agents. The composition of Example 7/2 of BEUTLER clearly does not contain any emulsifier B as recited in the present claims, i.e., a polyethoxylated fatty acid ester having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 and/or an ester of a fatty acid having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units.

The composition of Example 4/2 of BEUTLER (additionally relied on by the Examiner in this regard) on the other hand comprises 1.5 % by weight of cetyl alcohol (which corresponds to emulsifier C recited in present independent claims 18 and 42) as the only consistency-providing agent and 6.0 % by weight of PEG-9 stearate (which corresponds to emulsifier B recited in present independent claims 18 and 42) as the only non-ionic emulsifier. The composition of Example 4/2 clearly does not comprise a compound which would qualify as emulsifier A as recited in the present claims, i.e., a wholly or partially neutralized or unneutralized, branched or unbranched, saturated or unsaturated fatty acid having a chain length of from 10 to 40 carbon atoms.

Moreover, the compositions of Examples 4/2 and 7/2 of BEUTLER differ significantly in a number of other aspects (components) as well. For example, the oil component of the composition of Example 4/2 consists of 24 % by weight of a single substance, i.e., isopropyl myristate, whereas the oil component of the composition of Example 7/2 consists of three substances, i.e., (a) 4.0 % by weight of mineral oil, (b) 3.0 % by weight of isopropyl palmitate and (c) 3.0 % by weight of octyldodecanol.

Accordingly, not only are the oil components of the compositions of Examples 7/2 and 4/2 completely different from each other but the percentage of oil component in the composition of Example 7/2 also is less than half the percentage of the oil component of the composition of Example 4/2.

Also, the components of the composition of Example 4/2 which are different from water account for 31.5 % by weight, compared to 15.5 % by weight, in the case of the composition of Example 7/2.

In addition to the substantial differences set forth above, the compositions of Examples 4/2 and 7/2 differ not only with respect to the amounts and types of consistency-providing agent(s) but also with respect to the amount and type of non-ionic emulsifier employed therein.

At any rate, in view of the number of substantial differences in the compositions of Examples 4/2 and 7/2 of BEUTLER, one of ordinary skill in the art will not assume that the non-ionic emulsifier used in Example 7/2 of BEUTLER, i.e., (2 % by weight of) cetearth-12 and the non-ionic emulsifier employed in Example 4/2 of BEUTLER, i.e., (6 % by weight of) PEG-9 stearate are interchangeable, the more so since cetearth-12 and PEG-9 stearate are not only different compounds (and employed in different amounts) but even belong to different classes of compounds.

**3. BEUTLER Fails to Disclose a Composition Which Necessarily  
Comprises a Total of 2 % to 20 % by Weight of Emulsifiers A to C**

Independent claims 18 and 42 recite that the preparation recited therein comprises a total of from 2 % to 20 % by weight of emulsifiers A to C.

Even if one were to assume, *arguendo*, that a combination of Examples 7/2 and 4/2 of BEUTLER is able to anticipate a preparation which comprises emulsifiers A to C, it is not seen that BEUTLER contains any disclosure which in combination with Example 7/2 thereof predominantly relied on by the Examiner necessarily results in a total concentration of emulsifiers A to C of from 2 % to 20 % by weight, and neither has the Examiner offered any explanation in this regard.

For at least all of the foregoing reasons, the Examiner has failed to establish that the subject matter of any one of claims 18-22, 28-33, 35, 42 and 43 is anticipated by BEUTLER.

**4. BEUTLER Fails to Disclose a Method as Recited in the Claim 42**

Appellants further note that independent claim 42 is drawn to a method of preparing a cosmetic or dermatological preparation which comprises a gaseous ingredient, which method comprises rendering the preparation self-foaming and/or foam-like by incorporating into said preparation a total of from 2 % to 20 % by weight, based on the total weight of the preparation of emulsifier A to C as recited in claim 42.

Even if one were to assume, *arguendo*, that BEUTLER discloses a combination of emulsifiers A to C as recited in claim 42, Appellants are unable to see that BEUTLER discloses a method wherein a composition is rendered self-foaming and/or foam-like by incorporating in the composition a combination of emulsifiers A to C (let alone in a total amount of from 2 % to 20 % by weight). In other words, the Examiner has not pointed to any composition of BEUTLER of which it can reasonably be assumed that it would not be self-foaming and/or foam-like if it did not contain a combination of emulsifiers A to C (in a total amount of from 2 % to 20 % by



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weight). This is yet another reason why the Examiner has failed to establish that BEUTLER anticipates claim 42.

**C. Claim 42 Is Not Properly Rejected under 35 U.S.C. § 102(b) As Anticipated by PENSKA**

**1. Summary of Rejection**

The rejection relies on Examples 6 and 7 of PENSKA and asserts that the compositions of these Examples, in addition to containing emulsifiers A to C, comprise fluorocarbons infused with carbon dioxide and thus will allegedly “inherently render the preparation self-foaming and/or foam-like”.

**2. There is No Evidence That a Composition According to PENSKA is Necessarily Self-Foaming and/or Foam-Like**

Appellants note that the Examiner has failed to provide any evidence whatsoever which would support the assertion that oil-in-water emulsions which comprise a fluorocarbon infused with carbon dioxide and in particular, the emulsions according to Examples 6 and 7 of PENSKA are necessarily self-foaming or foam-like.

In this regard, it is pointed out that PENSKA does not indicate how much carbon dioxide the emulsions of Examples 6 and 7 contain. Further, PENSKA does not appear to indicate that any of the compositions disclosed therein (all of which contain a fluorocarbon infused with carbon dioxide) forms a foam.

**3. PENSKA Fails to Disclose a Method of Rendering a Composition Self-Foaming and/or Foam-Like by Incorporating Therein Emulsifiers A to C**

Appellants further point out that claim 42 is drawn to a method of preparing a cosmetic or dermatological preparation which comprises a gaseous ingredient, which method comprises rendering the preparation self-foaming and/or foam-like by incorporating into said preparation a total of from 2 % to 20 % by weight, based on a total weight of the preparation of emulsifier A to C as recited in claim 42.

Appellants are unable to see that PENSKA discloses a method wherein a composition is rendered self-foaming and/or foam-like by incorporating in the composition a combination of emulsifiers A to C in a total amount of from 2 % to 20 % by weight.

Even if one were to assume, for the sake of argument, that the compositions of Examples 6 and 7 of PENSKA are self-foaming and/or foam-like, the Examiner has not provided any evidence that would make it reasonable to assume that these compositions are self-foaming and/or foam-like due to the presence of emulsifiers A to C present therein. In other words, the Examiner has not provided any arguments and/or evidence to the effect that these compositions would not be self-foaming and/or foam-like without the presence of emulsifiers A to C. In fact, it even appears that the Examiner is of the opinion that the emulsions of PENSKA are self-foaming and/or foam-like merely by virtue of the presence of (any amount of) carbon dioxide, i.e., regardless of the types and amounts of the other components of the emulsions (each of the emulsions of Examples 6 and 7 contains 16 different components plus water).

Appellants submit that for at least all of the foregoing reasons the Examiner has failed to establish that PENSKA anticipates claim 42.

**D. Claim 42 Is Not Properly Rejected under 35 U.S.C. § 102(b) As Anticipated by MARILYN**

**1. Summary of Rejection**

The rejection mainly relies on Example I of MARILYN which is directed to an instant foaming aerosol shave foam which comprises, *inter alia*, palmitic acid, stearyl alcohol and PEG-150 stearic acid ester as well as a propellant.

**2. The Composition of Example I of MARILYN Does Not Contain an Emulsifier B**

It is pointed out that the composition of Example I of MARILYN does not contain an emulsifier B as recited in claim 42. Specifically, PEG-150 stearic acid ester apparently is not a polyethoxylated fatty acid ester having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 or an ester of a fatty acid having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units.

**3. MARILYN Fails to Disclose a Method of Rendering a Composition Self-Foaming and/or Foam-Like by Incorporating Therein Emulsifiers A to C**

Appellants point out again that present claim 42 is drawn to a method of preparing a cosmetic or dermatological preparation which comprises a gaseous ingredient wherein the preparation is rendered self-foaming and/or foam-like by incorporating therein from 2 to 20 % by weight of emulsifiers A to C as recited in present claim 42. Even if one were to assume, for the sake of argument, that PEG-150 stearic acid ester qualifies as emulsifier B, Appellants note that the Examiner has not provided any arguments and/or evidence which would make it appear reasonable to assume that the composition of Example I of MARILYN would not be self-foaming without the presence of emulsifiers A to C.

Appellants submit that for at least all of the foregoing reasons, the Examiner also has failed to establish that MARILYN anticipates claim 42.

**E. Claims 18-24, 28-31, 34, 36-39, 42 and 43 Are Not Properly Rejected under 35 U.S.C. § 103(a) As Unpatentable Over BELLON**

**1. Summary of Rejection**

The rejection relies mainly on Example 1 of BELLON and alleges that this example discloses a facial foam composition which comprises 22 % by weight of PEG-100 stearate glyceryl stearate (allegedly corresponding to emulsifier B according to the present claims), 12 % by weight of stearic acid (corresponding to emulsifier A according to the present claims) and 6 % by weight of octyldodecanol (corresponding to co-emulsifier C according to the present claims) as well as 70 % by volume of nitrogen. The rejection concedes that BELLON does not exemplify a preparation wherein the total amount of emulsifiers A, B and C is from 2 to 20 % by weight of the preparation but essentially alleges that it would have been obvious for one of ordinary skill in the art to provide a corresponding preparation.

The Examiner relies on an English language translation of BELLON prepared by the Patent and Trademark Office. In the following Appellants will exclusively refer to this English language translation.

**2. It is Unknown if “PEG-100 Stearate Glyceryl Stearate” Qualifies as Emulsifier B**

The Examiner takes the position that “PEG-100 stearate glyceryl stearate” used in Example 1 of BELLON is a polyethoxylated fatty ester which falls within the definition of emulsifier B recited in the present independent claims. In this regard, it is pointed out that the

substance used in Example 1 of BELLON is not merely PEG-100 stearate, but PEG-100 stearate glyceryl stearate, the specific structure of which is unknown to Appellants. The Examiner has not provided any explanation and/or evidence as to what the structure of this substance is, either. That this substance is a special, not readily available substance is indicated by the fact that in Example 1 of BELLON it is stated that the substance is marketed by the company SEPPIC (see Table at page 11 of BELLON). This would apparently be unnecessary if PEG-100 stearate glyceryl stearate were readily available from a number of commercial sources (as this is would be the case with PEG-100 stearate).

**3. BELLON Fails to Render Obvious a Composition Which Contains Not More Than 20 % by Weight of the Alleged Emulsifiers A to C**

**a. The Composition of Example 1 of BELLON Contains Much More Than 20 % by Weight of the Alleged Emulsifiers A to C**

Even if one were to assume, for the sake of argument, that “PEG-100 stearate glyceryl stearate” is an emulsifier B as recited in the present claims, the fact remains that the total concentration of emulsifiers A to C according to Example 1 of BELLON is 22 % + 12 % + 6 % = 40 %. Even if it is taken into account that the total concentrations indicated in Example 1 of BELLON add up to a little over 120 %, the total concentration of emulsifiers A to C, normalized to 100 %, would still be about 33 %; i.e., more than one and a half times the total concentration of 20 % by weight recited in present independent claims 18 and 42, and more than twice the total concentration of 15 % by weight recited in present independent claim 37.

Appellants note that according to page 6, last paragraph of the Final Office Action of February 23, 2007 the argument that the composition of Example 1 of BELLON contains far more than 20 % by weight of (alleged) emulsifiers A to C has not been found persuasive

“because the percentage weights Applicants is relying upon is not the composition as a whole, but the composition without nitrogen”.

In this regard, Appellants point out that nitrogen is a gas and as such cannot reasonably be assumed to significantly change the relative concentrations of the non-gaseous components of the composition of Example 1 of BELLON. It further is noted that the composition of Example 1 contains 70 % by volume of nitrogen, i.e., a negligible amount in terms of weight.

**b. BELLON Does Not Indicate the Total Concentration of the Alleged Emulsifiers A to C to be a Result-Effective Variable**

The Examiner further appears to take the position that it would have been obvious to one of ordinary skill in the art to change (reduce) the total concentration of the alleged emulsifiers A, B and C of Example 1 of BELLON to make it fall within the claimed range of from 2 % to 20 % by weight, i.e., to use not more than about 60 % of the total amount of the alleged emulsifiers A to C. However, there is no apparent reason whatsoever for changing (reducing) the total amount of the alleged emulsifiers A to C in Example 1 of BELLON, let alone to reduce this amount by at least about 40 %.

Appellants point out that a particular parameter (here: the total amount of emulsifiers A, B and C) must first be recognized as result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be recognized as routine experimentation. *In re Antonie*, 559 F.2d 617, 195 USPQ 6 (CCPA 1977).

**c. BELLON Does Not Discuss the Alleged Emulsifiers A to C in Combination**

Appellants further point out that BELLON does not even discuss the compounds which allegedly correspond to the present emulsifiers A, B and C in combination, let alone as an emulsifier system, but mentions them separately and for different purposes, if at all.

Specifically, the stearic acid of Example 1 of BELLON is discussed as a possible constituent of the lipophilic phase and the “soap” of the composition of BELLON (see, e.g., page 4, second paragraph and page 5, last paragraph of the English language translation of BELLON).

Fatty bodies which include “esters of oxyethylenated (or not) fatty acids” of BELLON (which may or may not encompass the “PEG-100 stearate glyceryl stearate” of Example 1), vegetable, mineral or synthetic oils, non-volatile and volatile silicone oils... are mentioned, among many others, as (optional) traditional cosmetic adjuvants of the composition (see, e.g., page 8, second paragraph of the English language translation of BELLON), i.e., are not even identified as emulsifiers (but instead as “fatty bodies”) and also are not indicated to be associated with any advantage which would make their incorporation in a composition of BELLON particularly desirable.

The intended function of the third component of interest of Example 1 of BELLON, i.e., octyldodecanol, is not identified in BELLON at all. The fact that BELLON does not even mention the function of, let alone any advantage associated with the presence of octyldodecanol clearly fails to provide any reason for optimizing the concentration of octyldodecanol in the composition of Example 1 of BELLON. Further, even if one were to assume, *arguendo*, that there is a reason for one of ordinary skill in the art to optimize the concentration of octyldodecanol, it is not seen that there is a reason for optimizing the total concentration of

octyldodecanol, stearic acid and PEG-100 stearate glyceryl stearate. BELLON clearly lacks an indication that these three components together may give rise to any (advantageous) effect.

In other words, the question is not whether one of ordinary skill in the art could have optimized (reduced) the total concentration of the three components of interest in Example 1 of BELLON, but for which reason he or she would have done so. The present rejection does not explain where a corresponding reason is supposed to come from.

**4. BELLON Fails to Render Obvious a Method of Rendering a Composition Self-Foaming and/or Foam-Like by Incorporating Emulsifiers A to C Therein**

There is at least one additional reason why BELLON fails to render obvious the subject matter of independent claim 42. Specifically, claim 42 is drawn to a method of preparing a cosmetic or dermatological preparation which comprises a gaseous ingredient, which method comprises rendering the preparation self-foaming and/or foam-like by incorporating into said preparation a total of from 2 % to 20 % by weight, based on a total weight of the preparation of emulsifier A to C as recited in claim 42.

Even if one were to assume, for the sake of argument, that (a) the PEG-100 stearate glyceryl stearate of the composition of Example 1 of BELLON qualifies as emulsifier B and (b) there is an apparent reason for one of ordinary skill in the art to reduce the total concentration of the alleged emulsifiers A to C in the composition of BELLON from more than 30 % by weight to 20 % by weight, it is not seen that BELLON provides any indication that the presence of the alleged emulsifiers A to C is critical for rendering the composition of Example 1 of BELLON self-foaming and/or foam-like. As set forth above, BELLON does not even give a reason for the presence of octyldodecanol. Moreover the functions indicated by BELLON for the alleged

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emulsifiers A and B have nothing to do with foam formation. Accordingly, there is no reason for one of ordinary skill in the art to assume that without the presence of the alleged emulsifiers A to C the composition of Example 1 of BELLON would not be self-foaming and/or foam-like.

Appellants submit that for at least all of the foregoing reasons, the Examiner has failed to establish a *prima facie* case of obviousness of the subject matter of claims 18-24, 28-31, 34, 36-39, 42 and 43 in view of BELLON.

**F. Claims 25-27, 32, 33, 40 and 41 Are Not Properly Rejected under 35 U.S.C. § 103(a) As Unpatentable Over BELLON in View of SNYDER**

**1. Summary of Rejection**

The rejection concedes that BELLON fails to teach the presence of hydrophilic emulsifier and of particular alcohols such as cetyl alcohol and stearyl alcohol in the compositions disclosed therein. In this regard, the rejection relies on SNYDER which allegedly teaches a nonlathering cleansing mousse with skin condition benefits which may contain sorbitan monostearate as a surfactant and fatty alcohol foam modifiers such as cetyl alcohol and stearyl alcohol.

**2. Claims 25-27, 32, 33, 40 and 41 Are Not Unpatentable Over BELLON in View of SNYDER Because They Depend From Claims Which Are Not Unpatentable Over BELLON**

Claims 25-27, 32, 33, 40 and 41 all ultimately depend from independent claims 18 or 37, respectively. As set forth above in Section VII. E., independent claims 18 and 37 are not rendered obvious by BELLON for several reasons. It is noted that the Examiner does not allege that SNYDER remedies any of the deficiencies of BELLON discussed above. Accordingly, the subject matter of claims 25-27, 32, 33, 40 and 41 is not rendered unpatentable by BELLON in

view of SNYDER for at least all of the reasons set forth above in Section VII. E. with respect to, *inter alia*, independent claims 18 and 37.

**3. There is No Apparent Reason to Combine the Teachings of BELLON and SNYDER**

There are additional reasons why BELLON in view of SNYDER does not render obvious the subject matter of claims 25-27, 32, 33, 40 and 41. Specifically, BELLON is directed to compositions in the form of a foam (see, e.g., claims of BELLON). In contrast, SNYDER is directed to non-lathering compositions (see, e.g., title of SNYDER).

For example, in the first paragraph at page 10 of the English language translation of BELLON it is emphasized that “[t]he characteristic texture of the compositions according to the invention facilitates the formation of foam and thus allows one to use these composition [sic] as a hygiene product, such as those intended for cleaning the skin, to remove make-up from the face or shaving products.”

SNYDER on the other hand, states in column 2, lines 50-68 (emphases added):

The invention relates to a skin cleansing mousse, packaged in a pressurized aerosol dispenser, which provides superior skin conditioning benefits. The composition is nonlathering, and therefore does not require rinsing from the skin after application. The no-rinse feature results in maximum retention on the skin of the skin conditioning ingredients present in the mousse composition. The mousse has a rich creamy texture when dispensed from the aerosol dispenser. After application to the skin, any excess is easily wiped off (e.g., with a tissue or cloth), leaving a substantial residue of skin conditioning ingredients (moisturizers and emollients) on the skin. This is in contrast to high lathering mousse compositions which require rinsing. In the act of rinsing, substantial proportions of the skin conditioning ingredients which have been applied to the skin with the mousse are taken up into the rinse water and are thus wasted.

Appellants submit that in view of the substantial difference in the objectives of BELLON and SNYDER reflected by the above-recited passages of these documents there is no apparent reason for one of ordinary skill in the art to look in SNYDER for further emulsifiers (or other components) which can be added to the compositions of BELLON.

Moreover, an essential component of the compositions of BELLON is a fatty acid (see, e.g., claim 2 and page 5, last paragraph of BELLON). SNYDER on the other hand, does not even appear to mention fatty acids.

For at least all of the above additional reasons, BELLON in view SNYDER is unable to render obvious any of the rejected claims.

**4. Additional Reason Why BELLON in View of SNYDER Fails to Render Obvious Claims 26 and 41**

Appellants note that at page 7, last paragraph of the Final Office Action of February 23, 2007 it is mentioned that in SNYDER [s]orbitan monostearate is taught as a surfactant that provides skin cleansing benefits and imparts a uniform dispersion of emollient and other ingredients in the composition". This statement was probably made in view of claims 26 and 41 which recite mono-, di- and tri-fatty acid esters of sorbitol as hydrophilic emulsifiers. However, sorbitan and sorbitol are apparently not the same. This is yet another reason why BELLON in View of SNYDER fails to render obvious claims 26 and 41.

Appellants submit that for at least all of the foregoing reasons the Examiner has failed to establish a *prima facie* case of obviousness of the subject matter of claims 25-27, 32, 33, 40 and 41 in view of BELLON and SNYDER.

**G. Claim 35 is Not Properly Rejected under 35 U.S.C. § 103(a) As Unpatentable Over BELLON in View of SAINT-LEGER**

**1. Summary of Rejection**

The rejection concedes that BELLON fails to disclose carbon dioxide as the gas in the compositions disclosed therein but alleges that SAINT-LEGER teaches carbon dioxide and nitrogen as interchangeable gases.

**2. Response**

Claim 35 ultimately depends from claims 18. As set forth above in Section VII. E., independent claim 18 is not rendered obvious by BELLON for several reasons. It is noted that the Examiner does not allege that SAINT-LEGER remedies any of the deficiencies of BELLON discussed above. Accordingly, the subject matter of claims 35 is not rendered unpatentable by BELLON in view of SAINT-LEGER for at least all of the reasons set forth above in Section VII. E. with respect to, *inter alia*, independent claim 18.

In view of the foregoing it is submitted that the Examiner has failed to establish a *prima facie* case of obviousness of the subject matter of claim 35 in view of BELLON and SAINT-LEGER as well.

**H. Additional Reasons Why Claims 21, 22, 28 and 29 Are Not Properly Rejected under 35 U.S.C. § 102(b) As Being Anticipated by BEUTLER**

Even if the reasons set forth above in section VII. B. were not considered sufficient to convince the Board that none of the rejected claims is anticipated by BEUTLER, there are additional reasons with respect to at least claims 21, 22, 28 and 29 which make it even more

apparent that the rejection of these claims under 35 U.S.C. § 102(b) over BEUTLER is without merit.

**1. Claim 21**

Claim 21 (which depends from claim 18) recites that the weight ratio of emulsifiers A : B : C in the preparation of claim 18 is  $a : b : c$  and  $a, b, c$  represent rational numbers of from 1 to 5. In other words all three of the weight ratios A : B, A : C and B : C are not higher than 5 : 1 and not lower than 1 : 5.

Even if one were to assume, *arguendo*, that a combination of Examples 7/2 and 4/2 of BEUTLER is able to anticipate the preparation of claim 18, it is not seen that BEUTLER contains any disclosure which in combination with Example 7/2 thereof predominantly relied on by the Examiner necessarily results in all weight ratios of emulsifiers A to C being not higher than 5 : 1 and not lower than 1 : 5, and neither has the Examiner offered any explanation in this regard.

For at least this additional reason, the Examiner has failed to establish that claim 21 is anticipated by BEUTLER.

**2. Claim 22**

Claim 22 (which depends from claim 21 which in turn depends from claim 18) recites that the weight ratio of emulsifiers A : B : C in the preparation of claim 18 is  $a : b : c$  and  $a, b, c$  represent rational numbers of from 1 to 3. In other words all three of the weight ratios A : B, A : C and B : C are not higher than 3 : 1 and not lower than 1 : 3.

Even if one were to assume, *arguendo*, that a combination of Examples 7/2 and 4/2 of BEUTLER is able to anticipate the preparation of claim 18, it is not seen that BEUTLER contains any disclosure which in combination with Example 7/2 thereof predominantly relied on by the Examiner necessarily results in all weight ratios of emulsifiers A to C being not higher than 3 : 1 and not lower than 1 : 3, and neither has the Examiner offered any explanation in this regard.

For at least this additional reason, the Examiner has failed to establish that claim 22 is anticipated by BEUTLER.

### **3. Claim 28**

Claim 28 (which depends from claim 18) recites that the preparation of claim 18 comprises a total of from 5 % to 15 % by weight of emulsifiers A to C.

Even if one were to assume, *arguendo*, that a combination of Examples 7/2 and 4/2 of BEUTLER is able to anticipate the preparation of claim 18, it is not seen that BEUTLER contains any disclosure which in combination with Example 7/2 thereof predominantly relied on by the Examiner necessarily results in a total concentration of emulsifiers A to C of from 5 % to 15 % by weight, and neither has the Examiner offered any explanation in this regard.

For at least this additional reason, the Examiner has failed to establish that claim 28 is anticipated by BEUTLER.

**4. Claim 29**

Claim 29 (which depends from claim 18) recites that the preparation of claim 18 comprises a total of from 8 % to 13 % by weight of emulsifiers A to C.

Even if one were to assume, *arguendo*, that a combination of Examples 7/2 and 4/2 of BEUTLER is able to anticipate the preparation of claim 18, it is not seen that BEUTLER contains any disclosure which in combination with Example 7/2 thereof predominantly relied on by the Examiner necessarily results in a total concentration of emulsifiers A to C of from 8 % to 13 % by weight, and neither has the Examiner offered any explanation in this regard.

For at least this additional reason, the Examiner has failed to establish that claim 29 is anticipated by BEUTLER.

**I. Additional Reasons Why Claims 22, 23, 28, 29 and 37 Are Not Properly Rejected under 35 U.S.C. § 103(a) As Being Unpatentable Over BELLON, Alone or in View of SNYDER**

Even if the reasons set forth above in sections VII. E. and F. were not considered sufficient to convince the Board that none of the rejected claims is rendered obvious by any of the documents cited by the Examiner (and any combination thereof), there are additional reasons with respect to at least claims 22, 23, 28, 29 and 37 which make it even more apparent that the rejection of these claims as is without merit.

**1. Claim 22**

Claims 22 (which depends from claim 21 which in turn depends from claim 18) recites that the weight ratio of emulsifiers A : B : C is a : b : c and a, b, c represent rational numbers of from 1 to 3. In other words all three of the weight ratios A : B, A : C and B : C are not higher than 3 : 1 and not lower than 1 : 3.

Even if one were to assume, *arguendo*, that the composition of Example 1 of BELLON relied on by the Examiner contains all three types of emulsifiers A to C, it is not seen that BELLON provides any reason to control the weight ratio of these emulsifiers, let alone to keep the weight ratios within the above ranges. In this regard, it is noted that the weight ratio of alleged emulsifier B to emulsifier C (octyldodecanol) in Example 1 of BELLON is 22 : 6, i.e., about 3.7 : 1. As set forth above in Section VII. E., there is no reason to consider the alleged emulsifiers A to C together because BELLON does not contain any indication that these three components work together to give rise to a common effect.

For at least all of these additional reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 22.

**2. Claim 23**

Claims 23 (which depends from claim 21 which in turn depends from claim 18) recites that the weight ratio of emulsifiers A : B : C is 1 : 1 : 1.

Even if one were to assume, *arguendo*, that the composition of Example 1 of BELLON contains all three types of emulsifiers A to C, it is not seen that BELLON provides any reason to control the weight ratio of these emulsifiers, let alone to use weight ratios of 1 : 1 : 1. In this



regard, it is noted that the weight ratio of alleged emulsifier B to emulsifier C (octyldodecanol) in Example 1 of BELLON is 22 : 6, i.e., about 3.7 : 1. The remaining weight ratios also are at least (almost) twice as high as the weight ratios recited in claim 23. As set forth above in Section VII. E., there is no reason to consider the alleged emulsifiers A to C together because BELLON does not contain any indication that these three components work together to give rise to a common effect.

For at least all of these additional reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 23 as well.

### **3. Claims 28 and 37**

Claim 28 (which depends from claim 18) and independent claim 37 both recite that the preparation recited therein comprises a total of from 5 % to 15 % by weight of emulsifiers A to C.

Even if one were to assume, *arguendo*, that the composition of Example 1 of BELLON relied on by the Examiner contains all three types of emulsifiers A to C, it is not seen that there is any reason for controlling the total concentration thereof, let alone for keeping the total concentration at a level which is less than 50 % of the total concentration employed in Example 1 of BELLON. As set forth above in Section VII. E., there is no reason to consider (optimize) the concentrations of the alleged emulsifiers A to C together because BELLON does not contain any indication that these three components work together to give rise to a common effect.

For at least all of these additional reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 28 and 37.

**4. Claim 29**

Claim 29 (which depends from claim 18) recites that the preparation recited therein comprises a total of from 8 % to 13 % by weight of emulsifiers A to C.

Even if one were to assume, *arguendo*, that the composition of Example 1 of BELLON relied on by the Examiner contains all three types of emulsifiers A to C, it is not seen that there is any reason for controlling the total concentration thereof, let alone for keeping the total concentration at a level which is less than 40 % of the total concentration employed in Example 1 of BELLON. As set forth above in Section VII. E., there is no reason to consider (optimize) the concentrations of the alleged emulsifiers A to C together because BELLON does not contain any indication that these three components work together to give rise to a common effect.

For at least all of these additional reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 29 as well.

## **VIII. CONCLUSION**

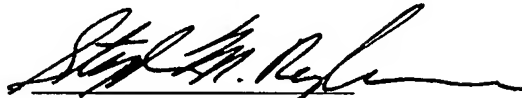
Appellants respectfully submit that for at least all of the foregoing reasons, the Examiner has failed to establish that claims 18-22, 28-33, 35, 42 and 43 are anticipated by any one of BEUTLER, PENSKA or MARILYN and also has failed to establish a *prima facie* case of obviousness of any of the rejected claims 18-43 with respect to BELLON, either alone or in view

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of SNYDER or SAINT-LEGER. The Board is, therefore, respectfully requested to reverse the Final Rejection and to allow the application to issue in its present form.

Respectfully submitted,  
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## CLAIMS APPENDIX

18. A self-foaming and/or foam-like cosmetic or dermatological preparation comprising a total of from 2 % to 20 % by weight, based on a total weight of the preparation, of

(a) at least one emulsifier A selected from wholly or partially neutralized and unneutralized, branched and/or unbranched, saturated and/or unsaturated fatty acids having a chain length of from 10 to 40 carbon atoms,

(b) at least one emulsifier B selected from polyethoxylated fatty acid esters having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 and esters of fatty acids having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units, and

(c) at least one coemulsifier C selected from branched and/or unbranched, saturated and/or unsaturated fatty alcohols having a chain length of from 10 to 40 carbon atoms; and from 1 % to 90 % by volume, based on a total volume of the preparation, of at least one gas selected from air, oxygen, nitrogen, helium, argon, nitrous oxide and carbon dioxide.

19. The preparation of claim 18, wherein the preparation comprises up to 30 % by weight, based on a total weight of the preparation, of a lipid phase comprising one or more nonpolar liquids having a polarity of at least 30 mN/m.

20. The preparation of claim 19, wherein the lipid phase comprises up to 40 % by weight, based on a total weight of the lipid phase, of polar liquids having a polarity of at most 30 mN/m.
21. The preparation of claim 18, wherein a weight ratio of emulsifiers A : B : C is a : b : c and a, b and c independently represent rational numbers of from 1 to 5.
22. The preparation of claim 21, wherein a, b, c independently represent rational numbers of from 1 to 3.
23. The preparation of claim 21, wherein a : b : c is 1 : 1 : 1.
24. The preparation of claim 18, wherein the preparation further comprises at least one additional emulsifier selected from polyglyceryl-2 dipolyhydroxystearate, PEG-30 dipolyhydroxystearate, cetyldimethicone copolyol, glycol distearate, glycol dilaurate, diethylene glycol dilaurate, sorbitan trioleate, glycol oleate, glyceryl dilaurate, sorbitan tristearate, propylene glycol stearate, propylene glycol laurate, propylene glycol distearate, sucrose distearate, PEG-3 castor oil, pentaerythrityl monostearate, pentaerythrityl sesquioleate, glyceryl oleate, glyceryl stearate, glyceryl diisostearate, pentaerythrityl monooleate, sorbitan sesquioleate, isostearyl diglyceryl succinate, glyceryl caprate, palm glycerides, cholesterol, lanolin, glyceryl oleate (with 40% monoester), polyglyceryl-2 sesquiisostearate, polyglyceryl-2 sesquioleate, PEG-20 sorbitan beeswax, sorbitan oleate,
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sorbitan isostearate, trioleyl phosphate, glyceryl stearate and cetareth-20, sorbitan stearate, PEG-7 hydrogenated castor oil, PEG-5-soyasterol, PEG-6 sorbitan beeswax, glyceryl stearate SE, methylglucose sesquistearamates, PEG-10 hydrogenated castor oil, sorbitan palmitate, PEG-22/dodecyl glycol copolymer, polyglyceryl-2 PEG-4 stearate, sorbitan laurate, PEG-4 laurate, polysorbate 61, polysorbate 81, polysorbate 65, polysorbate 80, tricetareth-4 phosphate, tricetareth-4 phosphate and sodium C<sub>14-17</sub> alkyl sec sulfonate, glyceryl stearate and PEG-100 stearates, polysorbate 85, trilaureth-4 phosphate, PEG-35 castor oil, sucrose stearate, trioleth-8 phosphate, C<sub>12-15</sub> pareth-12, PEG-40 hydrogenated castor oil, PEG-16 soyasterol, polysorbate 20, polyglyceryl-3 methylglucose distearate, PEG-40 castor oil, sodium cetearyl sulfate, lecithin, laureth-4 phosphate, propylene glycol stearate, PEG-25 hydrogenated castor oil, PEG-54 hydrogenated castor oil, glyceryl stearate, PEG-6 caprylic/capric glycerides, glyceryl oleate and propylene glycol, glyceryl lanolate, polysorbate 60, glyceryl myristate, glyceryl isostearate, polyglyceryl-3 oleate, glyceryl laurate, PEG-40 sorbitan peroleate, laureth-4, glycerol monostearate, isostearyl glyceryl ether, cetearyl alcohol, sodium cetearyl sulfate, PEG-22 dodecyl glycol copolymer, polyglyceryl-2 PEG-4 stearate, pentaerythrityl isostearate, polyglyceryl-3-diisostearate, sorbitan oleate, hydrogenated castor oil, Cera alba, sodium dihydroxycetyl phosphate and isopropyl hydroxycetyl ether, methylglucose sesquistearamate, methylglucose dioleate, sorbitan oleate, PEG-2 hydrogenated castor oil and ozokerite, PEG-45/dodecyl glycol copolymer, methoxy PEG-22/dodecyl glycol copolymer, hydrogenated cocoglycerides, polyglyceryl-4 isostearate, PEG-40 sorbitan peroleate, PEG-40 sorbitan perisostearate, PEG-8 beeswax, laurylmethicone copolyol, polyglyceryl-2 laurate, stearamidopropyl PG dimonium chloride phosphate, PEG-7 hydrogenated castor oil, triethyl

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citrate, glyceryl stearate citrate, cetyl phosphate, polyglycerol methylglucose distearate, poloxamer 101, potassium cetyl phosphate, glyceryl isostearate, and polyglyceryl-3 diisostearates.

25. The preparation of claim 18, wherein the preparation further comprises one or more hydrophilic emulsifiers.

26. The preparation of claim 25, wherein the one or more hydrophilic emulsifiers comprise one or more compounds selected from mono-, di- and tri-fatty acid esters of sorbitol.

27. The preparation of claim 25, wherein the one or more hydrophilic emulsifiers are present in an amount of less than 5 % by weight, based on a total weight of the preparation.

28. The preparation of claim 18, wherein the preparation comprises a total of from 5 % to 15 % by weight of emulsifiers A to C.

29. The preparation of claim 18, wherein the preparation comprises a total of from 8 % to 13 % by weight of emulsifiers A to C.

30. The preparation of claim 18, wherein the at least one emulsifier A comprises one or more of stearic acid and a stearate, isostearic acid and an isostearate, palmitic acid and an isopalmitate, and myristic acid and a myristate.

31. The preparation of claim 18, wherein the at least one emulsifier B comprises one or more of PEG-9 stearate, PEG-8 distearate, PEG-20 stearate, PEG-8 stearate, PEG-8 oleate, PEG-25 glyceryl trioleate, PEG-40 sorbitan lanolate, PEG-15 glyceryl ricinoleate, PEG-20 glyceryl stearate, PEG-20 glyceryl isostearate, PEG-20 glyceryl oleate, PEG-20 methylglucose sesquisteate, PEG-30 glyceryl isostearate, PEG-20 glyceryl laurate, PEG-30 stearate, PEG-30 glyceryl stearate, PEG-40 stearate, PEG-30 glyceryl laurate, PEG-50 stearate, PEG-100 stearate, and PEG-150 laurate.

32. The preparation of claim 18, wherein the at least one coemulsifier C comprises one or more of butyloctanol, butyldecanol, hexyloctanol, hexyldecanol, behenyl alcohol, cetearyl alcohol and a lanolin alcohol.

33. The preparation of claim 18, wherein the at least one coemulsifier C comprises at least one of cetyl alcohol and stearyl alcohol.

34. The preparation of claim 18, wherein the preparation comprises from 10 % to 90 % by volume of the at least one gas.



35. The preparation of claim 18, wherein the at least one gas comprises carbon dioxide.
36. The preparation of claim 18, wherein the preparation further comprises one or more moisturizers.
37. A self-foaming and/or foam-like cosmetic or dermatological preparation comprising a total of from 5 % to 15 % by weight, based on a total weight of the preparation, of
- (a) at least one emulsifier A selected from wholly or partially neutralized and unneutralized, branched and/or unbranched, saturated and/or unsaturated fatty acids having a chain length of from 10 to 40 carbon atoms and comprising one or more of stearic acid and a stearate, isostearic acid and an isostearate, palmitic acid and an isopalmitate, and myristic acid and a myristate,
  - (b) at least one emulsifier B selected from polyethoxylated fatty acid esters having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 and esters of fatty acids having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units, the at least one emulsifier B comprising one or more of PEG-9 stearate, PEG-8 distearate, PEG-20 stearate, PEG-8 stearate, PEG-8 oleate, PEG-25 glyceryl trioleate, PEG-40 sorbitan lanolate, PEG-15 glyceryl ricinoleate, PEG-20 glyceryl stearate, PEG-20 glyceryl isostearate, PEG-20 glyceryl oleate, PEG-20 methylglucose sesquistearate, PEG-30 glyceryl isostearate, PEG-20 glyceryl laurate, PEG-30 stearate, PEG-30 glyceryl stearate, PEG-40 stearate, PEG-30 glyceryl laurate, PEG-50 stearate, PEG-100 stearate, and PEG-150 laurate, and

(c) at least one coemulsifier C selected from branched and/or unbranched, saturated and/or unsaturated fatty alcohols having a chain length of from 10 to 40 carbon atoms and comprising one or more of butyloctanol, butyldecanol, hexyloctanol, hexyldecanol, octyldodecanol, behenyl alcohol ( $C_{22}H_{45}OH$ ), cetearyl alcohol and a lanolin alcohol; and from 10 % to 80 % by volume, based on a total volume of the preparation, of at least one gas selected from air, oxygen, nitrogen, helium, argon, nitrous oxide and carbon dioxide.

38. The preparation of claim 37, wherein a weight ratio of emulsifiers A : B : C is a : b : c and a, b and c independently represent rational numbers of from 1 to 5.

39. The preparation of claim 38, wherein the at least one coemulsifier C comprises at least one of cetyl alcohol and stearyl alcohol.

40. The preparation of claim 38, wherein the preparation further comprises one or more hydrophilic emulsifiers in a concentration of less than 5 % by weight, based on a total weight of the preparation.

41. The preparation of claim 40, wherein the one or more hydrophilic emulsifiers are selected from mono-, di- and tri-fatty acid esters of sorbitol.

42. A method of preparing a cosmetic or dermatological preparation which comprises a gaseous ingredient, wherein the method comprises rendering the preparation self-foaming

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and/or foam-like by incorporating into said preparation a total of from 2 % to 20 % by weight, based on a total weight of the preparation, of

(a) at least one emulsifier A selected from wholly or partially neutralized and unneutralized, branched and/or unbranched, saturated and/or unsaturated fatty acids having a chain length of from 10 to 40 carbon atoms,

(b) at least one emulsifier B selected from polyethoxylated fatty acid esters having a chain length of from 10 to 40 carbon atoms and a degree of ethoxylation of from 5 to 100 and esters of fatty acids having a chain length of from 10 to 40 carbon atoms and polyethylene glycol comprising from 5 to 100 ethylene glycol units, and

(c) at least one coemulsifier C selected from branched and/or unbranched, saturated and/or unsaturated fatty alcohols having a chain length of from 10 to 40 carbon atoms.

43. A method of caring for skin, wherein the method comprises topically applying to skin an effective amount therefor of the preparation of claim 18.

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## **EVIDENCE APPENDIX**

None.

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## **RELATED PROCEEDINGS APPENDIX**

None.